

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AHMAD RAMADAN SELEEM
ATIA,

Plaintiff,

CASE NO. C14-1966JLR

ORDER DISMISSING COMPLAINT

UNITED STATES,

Defendant.

I. INTRODUCTION

Before the court is Defendant United States' motion to dismiss Plaintiff Ahmad Ramadan Seleem Atia's ("Mr. Atia") complaint. (Mot. (Dkt. # 5).) The court has considered the motion, the balance of the record, and the applicable law. Considering itself fully advised, the court grants the motion and dismisses Mr. Atia's complaint without leave to amend and without prejudice.

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II. BACKGROUND

2 On August 26, 2014, Mr. Atia filed a “Small Claims – Notice of Claim” in
3 Snohomish County District Court against the Lynnwood Post Office and Postmaster
4 James A. Sutliff claiming that he was owed “\$736.75 + Costs” for “Mobile Phone +
5 Postage.” (Small Claim (Dkt # 1-2).) The action was removed to federal court and,
6 pursuant to 28 U.S.C. § 2679(d)(1), the United States was substituted as the party
7 defendant. (See Not. of Rem. (Dkt. # 1); Not. of Substitution (Dkt. # 2).) The United
8 States moved to dismiss the action for lack of subject matter jurisdiction. (Mot. (Dkt. #
9 5).) Mr. Atia did not file a response. (See *generally* Dkt.) That motion is now before the
10 court.

III. ANALYSIS

12 | A. Postal Service Exception

13 The Federal Tort Claims Act (“FTCA”) is a limited waiver of sovereign immunity
14 that permits claims to be brought against the United States for the “negligent or wrongful
15 act or omission of any employee of the Government while acting within the scope of his
16 office or employment.” 28 U.S.C. § 1346(b)(1). Certain types of claims, however, are
17 expressly exempted from the FTCA’s scope. *See* 28 U.S.C. § 2680; *Molzof v. United*
18 *States*, 502 U.S. 301, 311 (1992) (“Through the § 2680 exceptions, Congress has taken
19 steps to protect the Government from liability that would seriously handicap efficient
20 government operations.”). The postal service exception provides that the FTCA’s waiver
21 of sovereign immunity does not extend to “any claim arising out of the loss, miscarriage,
22 or negligent transmission of letters or postal matter.” 28 U.S.C. § 2680(b); *see Anderson*

1 *v. U.S. Postal Serv.*, 761 F.2d 527, 528 (9th Cir. 1985) (applying 28 U.S.C. § 2680(b) to
 2 hold that the petitioner’s “tort claim against the Postal Service for loss of his package . . .
 3 was barred by sovereign immunity”).

4 Construed liberally, Mr. Atia’s allegations appear to seek damages related to the
 5 loss or damage of a mailed package that contained a mobile phone. *See Bernhardt v. L.A.*
 6 *Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003) (“Courts have a duty to construe pro se
 7 pleadings liberally, including pro se motions . . .”). As such, his claim falls squarely
 8 within the postal service exception to the FTCA. *See* 28 U.S.C. § 2680(b); *Anderson*,
 9 761 F.2d at 528. Because the United States has not waived sovereign immunity with
 10 respect to Mr. Atia’s claim, his claim must be dismissed for lack of subject matter
 11 jurisdiction. *See Anderson*, 761 F.2d at 528.

12 **B. Failure to Exhaust Administrative Remedies**

13 Additionally, the FTCA bars claimants from bringing suit in federal court until
 14 they have exhausted their administrative remedies. *McNeil v. United States*, 508 U.S.
 15 106, 113 (1993). Specifically, the FTCA provides: “An action shall not be instituted
 16 upon a claim against the United States . . . unless the claimant shall have first presented
 17 the claim to the appropriate Federal agency and his claim shall have been finally denied
 18 by the agency . . .” 28 U.S.C. § 2675(a). “The requirement of an administrative claim
 19 is jurisdictional.” *Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000). “Because
 20 the requirement is jurisdictional, it must be strictly adhered to.” *Id.* “This is particularly
 21 so since the FTCA waives sovereign immunity.” *Id.*

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1 Mr. Atia has not filed an administrative claim with the Postal Service seeking
2 recovery of his package. (See Arstad Decl. (Dkt. # 6) ¶¶ 3-4.) As such, he has failed to
3 exhaust his administrative remedies. *See* 28 U.S.C. § 2675(a). For this reason also, Mr.
4 Atia's claim must be dismissed for lack of subject matter jurisdiction. *See Brady*, 211
5 F.3d at 502.

6 **C. Leave to Amend**

7 "In general, a court should liberally allow a party to amend its pleading." *Sonoma*
8 *Cnty. Ass'n of Retired Employees v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013);
9 *see Fed. R. Civ. P. 15(a)*. Dismissal without leave to amend is proper, however, if any
10 amendment would be futile. *Id.* ("[D]ismissal without leave to amend is improper unless
11 it is clear . . . that the complaint could not be saved by any amendment.").

12 Here, it is clear that Mr. Atia's complaint cannot be saved by any amendment. As
13 discussed above, Mr. Atia's claim against the United States to recover damages for a
14 package lost in the mail is barred by sovereign immunity. *See* 28 U.S.C. § 2680(b); *see*
15 *Anderson*, 761 F.2d at 528. Therefore, the court dismisses Mr. Atia's action without
16 leave to amend.

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IV. CONCLUSION

2 For the foregoing reasons, the court GRANTS the United States' motion to
3 dismiss (Dkt. # 5) and DISMISSES Mr. Atia's complaint without leave to amend and
4 without prejudice.

5 Dated this 17th day of March, 2015.



Jim R. Blatt

JAMES L. ROBART
United States District Judge